

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL

In re Matter of)
)
Amendment of the Commission's)
Rules Regarding Installment)
Payment Financing For Personal)
Communications Services (PCS))
Licensees)

WT Docket 97-82 **RECEIVED**

NOV 24 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

PETITION FOR RECONSIDERATION

Cellular Holding, Inc. ("CHI" or "Petitioner") hereby respectfully submits its Petition For Reconsideration of the Commission's Second Report and Order and Further Notice of Proposed Rulemaking in WT Docket No. 97-82 (FCC 97-342, released October 16, 1997) ("Second R&O") which altered the Broadband PCS C-block payment arrangements and which proposed rules to govern the reauction of surrendered spectrum.^{1/}

CHI holds 14 F-block PCS licenses for Basic Trading Areas ("BTAs") in Mississippi, Tennessee, Texas, Colorado, Pennsylvania and Arkansas.^{2/} As an F-block licensee, Petitioner is directly and adversely affected by any decision to alter the payment terms for

^{1/} The Second R&O was published in the Federal Register on October 24, 1997, 62 Fed. Reg. 55375.

^{2/} CHI obtained 14 F-block licenses and one C-block license via *pro forma* assignment from its sister company, PCSouth, Inc., which was the successful bidder for such licenses. Both CHI and PCSouth, Inc. are wholly-owned subsidiaries of Telapex, Inc.

C-block but not F-block PCS licensees.^{3/}

Petitioner objects to the proposition that the Commission's license payment terms would be changed for one group of Entrepreneurs' Block winners and not the other group of Entrepreneurs' Block winners.^{4/} That the Commission, after the auctions are completed, would establish new payment terms for one group and not the other is astonishingly inequitable considering that:

- (a) both C-block and F-block high bidders are licensed to provide broadband PCS;
- (b) both groups were granted their licenses in most cases within 7 1/2 months of one another;^{5/}
- (c) bidder eligibility for both the C and F-blocks was governed by the same Commission rule, Section 24.709, and was based upon a maximum amount of gross revenues and total assets attributable to the applicant;

^{3/} Petitioner's affiliate, PCSouth, Inc., expressed the same position in comments filed with the Commission in this proceeding. See, Comments of Holland Wireless, L.L.C., et. al., filed June 23, 1997. The Commission did not address the point in the Second R&O.

^{4/} The concept of "Entrepreneurs' Blocks" for broadband PCS licensing was adopted by the Commission as a means to "...ensure that small businesses, rural telephone companies and businesses owned by women and minorities...have the opportunity to participate in the provision" of PCS, as Congress directed in Section 309(j)(4)(D)." *Fifth Report and Order* in PP Docket 93-253, 9 FCC Rcd 5532 (1994) at para. 7.

^{5/} Most C-block licenses were granted on September 17, 1996 (Public Notice, DA 96-1553); most F-block licenses were granted April 28, 1997 (Public Notice, DA 97-883).

- (d) the market boundaries (i.e., BTAs) for C-block and F-block licenses are identical;
- (e) the amount of spectrum licensed to each group is nearly the same if a C-block licensee avails itself of the "disaggregation" option offered by the Second R&O; and
- (f) both C-block and F-block licensees must compete with cellular system operators who generally have at least a 10-year head-start in the offering of wireless telecommunications, and with other PCS and Specialized Mobile Radio licensees which in most cases are larger, more experienced wireless system operators.

By assisting one group of Entrepreneurs' Block licensees and not the other, the Commission created a competitive imbalance among otherwise comparably situated licensees. Although well intended by the Commission in an attempt to assist C-block licensees, the exclusion of F-block licensees from equivalent payment options is highly prejudicial to F-block licensees who not only must meet their payment obligations but must overcome perhaps the worst head-start disadvantage faced by any wireless system operators in telecommunications history.

A post-auction change in the rules should be accomplished only with comparable treatment of similarly situated parties. Compare *Telephone and Data Systems v. FCC*, 19 F.3d 42 (D.C. Cir., 1994), *Telephone and Data Systems v. FCC*, 19 F.3d 655 (D.C. Cir., 1994) and *Melody Music, Inc. v. FCC*, 345 F.2d 730 (D.C. Cir. 1965) where

the court found that the Commission inadequately had explained its different conclusions when applying the same Commission standards under similar factual situations. F-block licensees like C-block licensees should have the opportunity to select among payment and license surrender options which allow for "Amnesty," "Prepayment" or other relief as may be the result of the Commission's reconsideration of the Second R&O.^{6/}

Looking back in time, it is apparent that many auction participants would have changed their bidding strategy if they had been aware that the auction rules and installment payment terms would be altered as they were by the Second R&O. Some participants would have bid higher on certain licenses, and attempted to assemble different regional market clusters, if they had known the payment rules would be altered, post-auction. While there is no practical means to replay the auctions and obtain different results under the new rules, there is a way to avoid further harm to the F-block auction participants.

Conclusion

The Commission's post-auction decision to grant payment and license surrender options to C-block but not F-block licensees is inconsistent with the Commission's obligation to treat similarly

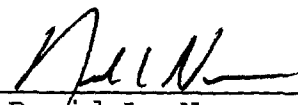
^{6/} See Second R&O, para. 6. Disaggregation of the type offered to 30 MHz C-block licensees does not appear to be a necessary or appropriate option for F-block licensees which hold 10 MHz of spectrum.

situated parties in a similar manner. F-block and C-block bidders were members of the same class of "entrepreneurs" who were granted exclusive access to two of the six blocks of broadband PCS spectrum, and who were encouraged to participate in the auctions as a means to stimulate, as Congress envisioned, the participation of "designated entities" in the provision of PCS. The result of the Second R&O is the creation of a competitive imbalance between C-block and F-block licensees who, by their own actions, committed to pay certain amounts for certain licenses and who should now be offered comparable payment and license surrender options.

For the foregoing reasons, Petitioner respectfully requests the FCC to reconsider its Second R&O to offer its restructuring options to all of the Entrepreneurs' Blocks license winners in both the C and F-block PCS auctions.

Respectfully submitted,

CELLULAR HOLDING, INC.

By: 
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Date: November 24, 1997

CERTIFICATE OF SERVICE

I, Loren B. Costantino, a secretary in the law offices of Lukas, McGowan, Nace & Gutierrez, Chartered, do hereby certify that I have on this 24th day of November, 1997, sent by hand-delivery, copies of the foregoing PETITION FOR RECONSIDERATION to the following:

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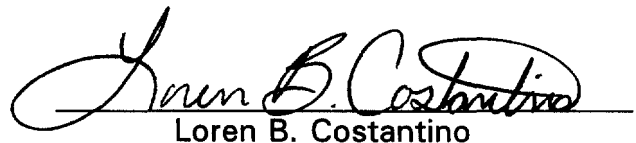
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